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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-[redacted]

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROBERT EAGLE ELK, JR.,
a/k/a BOBBY BEAR,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

TO THE

SUPREME COURT OF THE UNITED STATES

GARY D. JENSEN
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
P. O. Box 8110
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Attorneys for Respondent

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P.O. BOX 8110
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I

QUESTION PRESENTED FOR REVIEW

Whether the Eighth Circuit Court of Appeals erred in determining that the Government failed to meet its heavy burden of proving that a statement made by a young, inexperienced and frightened Indian defendant was made voluntarily when:

1. The statement was made after the conclusion of a polygraph examination conducted by an imposing FBI agent in an intimidating atmosphere; and

2. The statement was made after the FBI agent, using commonly employed interrogation techniques, told the defendant, among other things, that he had failed the examination "miserably"; that a welfare agency would care for his infant daughter should he go to jail; and, that he could avoid prison by claiming "self-defense" as another defendant had successfully done under similar circumstances; and

3. The record uncontradictedly reflects that the young Indian defendant consented to a polygraph examination only, not subsequent interrogation in the mandatory absence of defense counsel; and

4. The FBI agent admittedly failed to advise the young Indian defendant of his Miranda Rights after the polygraph examination and prior to launching into subsequent interrogation.

II

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TABLE OF AUTHORITIES

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Fields v. Wyrick, 682 F.2d 154 (8th Cir. 1982).....4,6,7,9,10,11

Miranda v. Arizona, 384 U.S. 436 (1966)..... 5

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OTHER AUTHORITIES:

Lykken, A Tremor in the Blood: Uses and Abuses of the Lie Detector, (1981)..... 6

IV

STATEMENT OF THE CASE

Respondent, Robert Eagle Elk, Jr. (hereinafter referred to as "Eagle Elk"), does not take issue with the Government's Statement of the Case except for the Government's omission of several material facts. Those facts are:

1. Eagle Elk is a young, inexperienced Indian with no prior criminal record; no prior contact with FBI agents; and no prior experience with polygraph examinations.

2. The polygraph examination was conducted in an intimidating atmosphere. The examination was conducted in a small FBI office in the Rapid City Federal Building. Eagle Elk was alone with the FBI agent during the examination. (Transcript 5; 9)

3. Eagle Elk's first court-appointed lawyer (who withdrew before trial because of a conflict) was not present when the FBI agent read Eagle Elk his Miranda Rights prior to the polygraph examination and when Eagle Elk, prior to the two and one-half to three hour examination, executed the Waiver of his Miranda Rights and Consent to take the polygraph examination. (Transcript 10)

4. The FBI agent, using commonly employed interrogation techniques and in an effort to create an atmosphere likely to result in Eagle Elk making an incriminating statement in the mandatory absence of counsel, told Eagle Elk that he had failed the polygraph examination "miserably". (Transcript 14-15)

5. The FBI agent, in addition to advising Eagle Elk that he had failed "miserably", told Eagle Elk that someone

would take care of his little daughter if Eagle Elk should go to jail. The FBI agent also suggested to Eagle Elk that he could successfully avoid prison by claiming "self-defense" because another defendant, a woman, had done so under similar circumstances. (Transcript 16; 35-36)

6. Eagle Elk, being a young Indian boy with no prior experience in courtrooms or with FBI agents, was nervous during the polygraph examination. (Transcript 30)

7. Prior to the polygraph examination, Eagle Elk made a statement consistent with the defense brought forward at trial, namely that the other individual with Eagle Elk and the deceased was responsible for killing the deceased. The FBI agent failed to record in any fashion whatsoever the substance of this prior, exculpatory statement. Neither could the agent "recall" the substance of the first statement. (Transcript 28-29; 38-39)

The foregoing facts, curiously omitted from the Government's Petition, are obviously relevant to the issue before this Court. All of these facts demonstrate the imposing and intimidating atmosphere Eagle Elk faced and the resulting involuntariness of his statement.

V

SUMMARY OF THE ARGUMENT

The Eighth Circuit Court of Appeals properly decided that the United States of America, through an FBI agent, cannot use a polygraph examination as a "psychological rubber hose" to pound an incriminating statement out of a young and inexperienced Indian defendant who, at the time he gave his statement, was alone with an imposing FBI agent in an intimidating FBI office.

In support of the decision of the Eighth Circuit Court of Appeals, Eagle Elk first reminds this Court that the Government has a "heavy burden" of proof to meet in order to establish that an incriminating statement was made voluntarily. In support of the Eighth Circuit Court of

Appeals' determination that the Government failed to meet that burden here, Eagle Elk calls upon the scientific study called upon by the Eighth Circuit Court of Appeals to illustrate what every judge and competent criminal trial lawyer takes for granted, namely that the Government uses the polygraph examination as an excuse to create an environment which will probably result in the defendant's making of an incriminating statement in the absence of defense counsel.

For additional support, Eagle Elk also calls upon case authority from another jurisdiction which has recognized the obvious, namely that a polygraph examination is a "psychological rubber hose" used to psychologically coerce a criminal defendant into making an incriminating statement.

Furthermore, while this Court has not addressed the specific issue and the decisions of this Court cited by the Government are largely irrelevant (until Fields, infra), Eagle Elk also calls upon two of this Court's decisions, namely Brewer v. Williams, 430 U.S. 387 (1977) and United States v. Henry, 447 U.S. 264 (1980) in support of the decision rendered by the Eighth Circuit Court of Appeals.

Finally, Eagle Elk demonstrates that the Court's decision here need not mirror that recently rendered by the Court in Fields v. Wyrick, 682 F.2d 154 (8th Cir. 1982), because of the material factual differences which exist between the cases.

VI

ARGUMENT

THE EIGHTH CIRCUIT COURT OF APPEALS PROPERLY DETERMINED THAT THE STATEMENT SHOULD HAVE BEEN SUPPRESSED.

A. Preliminary Remarks.

It is difficult to believe that the Government is serious and acting in good faith in advancing the proposition that it advances here. Reduced to its lowest level, that of practical application, the Government urges this Court to

accept the proposition that the Government can use a polygraph examination as a pretense to gain access to a defendant, outside of the presence of defense counsel, by design and thereafter use all of its interrogation tricks to pry an incriminating statement out of a defendant. Such a proposition is clearly unacceptable and improper under the law. It is also unnecessary to effective law enforcement. The Eighth Circuit Court of Appeals recognized the same in reaching the result it did here.

B. Heavy Burden on Government.

This Court must never lose sight of the well-established principle that the Government has a "heavy burden" of proof to meet in establishing that an incriminating statement was made voluntarily. See Brewer v. Williams, 430 U.S. 387, 403 (1977). This Court has repeatedly emphasized the "heavy burden" it has placed on the Government since its decision in Miranda v. Arizona, 384 U.S. 436, 475 (1966), when the Court stated:

> Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders.

As the Eighth Circuit Court of Appeals recognized, the Government failed to meet that burden here. That failure existed here because the Government improperly used a polygraph examination and additional interrogation techniques to psychologically pound an incriminating statement out of Eagle Elk.

C. Insidious Use of Polygraph Examination.

Scientists who have studied the Government's use of polygraph examinations have concluded the obvious, namely that the Government uses polygraph examinations and additional interrogation techniques to illicit incriminating statements from criminal defendants who have been lured away

from defense counsel. One of those scientists, Professor Lykken, was referred to by the Eighth Circuit Court of Appeals in Fields:

> It has been suggested that the primary utility of polygraphs administered in the course of a criminal investigation is to induce confessions from the accused. See Lykken, A Tremor in the Blood: Uses and Abuses of the Lie Detector, 214-15 (1981). See Fields at 159.

In support of its statement, the Eighth Circuit made a reference to a special study conducted by Professor Lykken:

> Professor Lykken cites, for example, the experience of the Los Angeles Police Department polygraph laboratory. Their examiners estimate that they obtain confessions from twenty-five percent of the suspects subjected to polygraph tests. See n. 7 of Fields.

As the Court of Appeals went on to imply, their appears to be little other reason for the Government's use of polygraph examinations. The test results are obviously not admissible because of their inherent unreliability.

As the Court concluded, however, the scientific unreliability of the polygraph examination does not lessen the psychological impact upon an individual who has been given such an examination and advised of unfavorable test results:

> The questionable reliability of so-called 'lie-detectors' does not, however, diminish the significant psychological impact the device can have on the examinee. See Lykken, supra, at 211-12. It may seem futile to maintain silence in the face of the examiner's statement that the machine, cloaked with the mystique of scientific infallibility, has shown the accused to be lying. Furthermore, the examiner is not likely to be challenged by the accused when he indicates that the machine has shown 'some deceit;' the accused, and frequently the court reviewing the circumstances of a polygraph-induced confession, has no way of knowing what, in fact, the test results revealed. Fields at 159.

Accordingly and as held by the Eighth Circuit Court of Appeals here, Miranda Rights should be given following a polygraph examination and before subsequent interrogation to insure that the defendant has not succumbed to the

psychological pressure imposed upon him by the examination, a report of unfavorable results, and additional interrogation techniques. As stated by the South Dakota Supreme Court:

> The situation a lie detector test presents can best be described as a psychological rubber hose. A defendant, when suddenly faced with the impersonal accuracy of a machine, may believe it is safer to confess and place himself at the mercy of the law rather than lie to the examiner and sacrifice any possibility of leniency. Under circumstances such as this we find it difficult to believe that a confession is voluntary unless it can be shown the defendant knows his constitutional rights and knows that his interests cannot be harmed by exercising those rights. When asked the right questions a defendant may confess if he believes he can be convicted by his own silence. See State v. Faller, 227 N.W.2d 433, 435 (S.D. 1975).

Inasmuch as Eagle Elk was not given his Miranda Rights after his polygraph examination and before subsequent interrogation and in view of the additional circumstances set out above (Eagle Elk's young age and inexperience; the intimidating setting; and the interrogation techniques used by the FBI agent), the Eighth Circuit properly determined that the Government failed to meet its "heavy burden" of proving that Eagle Elk's incriminating statement was made voluntarily.

D. Government Case Authority.

Although none of the cases cited by the Government in its Petition deal specifically with incriminating statements made subsequent to polygraph examinations (and, indeed, this Court has never been faced with this specific issue until its Fields decision discussed infra), a close review of the language used in two of those cases support the decision of the Eighth Circuit Court of Appeals here.

For example, in the case of United States v. Henry, 447 U.S. 264 (1980), this Court held that a defendant's incriminating statements made in prison to a paid, Government informer were not made voluntarily and should therefore have been suppressed. The critical point upon which the Court

seized and utilized in its reasoning was the Government's deliberate and intentional creation of an environment which was likely to induce the defendant to make incriminating statements without the assistance of counsel. As the Court stated as 274-75:

> Under the strictures of the Court's holdings on the exclusion of evidence, we conclude that the Court of Appeals did not err in holding that Henry's statements to Nichols should not have been admitted at trial. By intentionally creating a situation likely to induce Henry to make incriminating statements without the assistance of counsel, the Government violated Henry's Sixth Amendment right to counsel. This is not a case where, in Justice Cardozo's words, 'the constable . . . blundered,' (citation omitted); rather, it is one where the 'constable' planned an impermissible interference with the right to the assistance of counsel.

The same situation exists in this case. Here, the Government, by use of a polygraph as with the use of a paid informant in Henry, also "intentionally created a situation likely to induce [Eagle Elk] to make incriminating statements without the assistance of counsel . . . Similarly, this is not a case where the Government simply "blundered". Rather, it is one where the "'constable' planned an impermissible interference with the right to the assistance of counsel".

The same result is required by Brewer v. Williams, 430 U.S. 387 (1977). There, this Court held inadmissible an incriminating statement made by defendant to a law enforcement officer after the law enforcement officer disregarded defense counsel's instructions not to interrogate the defendant and played upon the emotions of the defendant while he was alone with the law enforcement officer. In discussing the role played by the law enforcement officer's clever play upon the defendant's emotions, this Court stated as 402-403:

> Moreover, the statements were obtained only after Detective Leaming's use of psychology on a person whom he knew to be deeply religious and an escapee from a mental hospital -- with the specific intent to rlicit incriminating statements. In the face of this evidence, the State

> has produced no affirmative evidence whatsoever to support its claim of waiver, and, a fortiori, it cannot be said that the State has met its 'heavy burden' of showing a knowing and intelligent waiver of . . . Sixth Amendment rights.

The same tactics were used here and resulted in an incriminating statement being made by Eagle Elk. In this case, the FBI agent, using commonly known interrogation techniques, played upon Eagle Elk's emotions by:

(1) intimidating Eagle Elk by telling him that he had failed the polygraph examination 'miserably'; and

(2) advising Eagle Elk that a welfare agency would take care of Eagle Elk's infant girl if Eagle Elk should go to jail; and

(3) advising Eagle Elk that he could probably avoid prison in any event by claiming "self-defense" as had been successfully done by another defendant under similar circumstances.

The fact of the matter is that the Government used the polygraph examination as a pretense, overtly exceeded the consent given by Eagle Elk and his counsel and then played upon Eagle Elk's emotions in the absence of counsel to pry an incriminating statement out of Eagle Elk. The Eighth Circuit Court of Appeals recognized the impropriety of proceeding in such a fashion. Eagle Elk urges this Court to also recognize the obvious.

E. Fields Decision.

Counsel for Eagle Elk has been apprised of the fact that this Court recently (November 29, 1982) reversed the decision of the Eighth Circuit Court of Appeals in Fields, the decision relied upon here by the Eighth Circuit. The factual differences between Fields and here, however, merit a different result being reached here by this Court.

This Court reversed the Eighth Circuit decision in Fields because:

> [t]he Court of Appeals did not examine the 'totality of circumstances,' as Edwards requires. Wyrich v. Fields, 51 U.S. L.Rev. 3411.

Upon considering the "totality of the circumstances" here, it is obvious that the Eighth Circuit Court of Appeals reached the proper result in this case.

There are four material differences in "circumstances" between Fields and here which not only justify, but compel affirmance of the decision of the Eighth Circuit Court of Appeals here.

The first material difference between Fields and this case is the nature of the defendant and the nature of the examiner. In Fields, the defendant was a white military man who submitted to a polygraph examination by another military man. Therefore, Fields was familiar and comfortable with the surroundings in which the examination was conducted. Nothing to the contrary exists in the Fields opinion.

In the present case, the situation is very different. Eagle Elk is a young and inexperienced Indian boy who submitted to an examination by an FBI agent, a representative of a Government agency Eagle Elk had no prior experience with and, in fact, was extremely intimidated by.

Because Eagle Elk found himself in an unfamiliar and intimidating setting, he, as opposed to Fields, was extremely apprehensive and nervous during and following the polygraph examination.

The second material difference between the factual situation presented in Fields and here centers around the physical setting in which the polygraph examination was conducted. In Fields, there is no reference nor mention made of a small, intimidating office being the site of the polygraph examination. Here, on the other hand, the FBI agent admitted that the polygraph examination was conducted in a small FBI office located in the Federal Building in Rapid City, South Dakota. He admitted that he and Eagle Elk sat approximately three feet apart during the entire examination and interrogation process.

The third material difference between the factual

situation presented in Fields and that presented here is in the nature of the interrogation conducted by the polygraph examiner subsequent to the polygraph examination. In Fields, the examiner simply advised the defendant that some of his responses were "deceptive". Here, the FBI agent intimidated Eagle Elk by telling Eagle Elk that he had failed the examination "miserably". Using additional, well-known interrogation techniques, the FBI agent then went on to reassure Eagle Elk that his infant girl would be taken care of if Eagle Elk went to jail. The FBI agent also attempted to lull Eagle Elk into a false sense of security by advising Eagle Elk that he could probably avoid prison in any event by claiming "self-defense" as another defendant had done in the recent past under similar circumstances.

Finally, the fourth material difference is that Eagle Elk's lawyer could not, by FBI policy, be present during the examination.

These four material differences in circumstances (the nature of the defendant and examiner; the nature of the physical setting; the nature of the interrogation conducted; and the fact that Eagle Elk's lawyer could not be present), while perhaps insignificant to the battle scarred judge or trial lawyer, are obvious in their significance to a young, inexperienced and scared Indian defendant such as Eagle Elk. These differences are more than ample justification for this Court to reach a result here which is contrary to that reached in Fields.

The circumstances here render it impossible for a court to conclude that Eagle Elk's statement was voluntary. Because of the FBI mandatory policy that defense counsel not be present for the examination and the resulting intimidating circumstances, this Court should require the FBI to do nothing other than conduct a polygraph examination. Comments during and following the examination should not be allowed. The FBI should be held to that which they have been given consent to do, namely conduct a polygraph examination.

VII

CONCLUSION

Accordingly, Eagle Elk strongly urges this Court to deny the Government's Petition for Writ of Certiorari.

Respectfully submitted this 30th day of December, 1982.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY: _____
Gary D. Jensen
Attorneys for Respondent
P. O. Box 8110
Rapid City, SD 57701

AFFIDAVIT OF SERVICE

State of South Dakota:
ss
County of Pennington :

I, Gary D. Jensen, a member of the Bar of the State of South Dakota and of the United States District Court for the District of South Dakota and of the United States Court of Appeals for the Eighth Circuit, and counsel of record for Robert Eagle Elk, Jr., a/k/a Bobby Bear, Respondent above named, hereby certify that on the 30th day of December, 1982, pursuant to Rule 28, Rules of the Supreme Court of the United States, I served one copy of the foregoing Response to Petition for Writ of Certiorari on Rex E. Lee, by depositing such copy in the United States Post Office, Rapid City, South Dakota, with first class postage prepaid, properly addressed to the post office of Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20503, the above-named Petitioner's counsel of record.

Therefore, all parties required to be served have been served in accordance with Rule 28.3, Rules of the Supreme Court of the United States.

Dated this 30th day of December, 1982.

_____
Gary D. Jensen

Subscribed and sworn to before me this 30th day of December, 1982.

_____
Notary Public, South Dakota
My Commission Expires: 12-17-1990

(SEAL)

ORIGINAL

RECEIVED
JAN 3 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROBERT EAGLE ELK, JR.,
a/k/a BOBBY BEAR,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, in accordance with the provisions of Title 28, United States Code, §1915, and Rule 46 of the Rules of the Supreme Court of the United States, hereby moves the Court for an Order granting Respondent leave to proceed in forma pauperis in responding to the Petition for Writ of Certiorari filed by the United States of America.

In support of said Motion, the undersigned respectfully represents and certifies to the Court that the Honorable James H. Wilson, U. S. Magistrate in and for the United States District Court for the District of South Dakota, previously entered an Order allowing Respondent to proceed in forma pauperis for the trial of this case. A copy of said Order is attached hereto, marked "Exhibit A" and by this reference made a part hereof as though fully set forth herein.

The undersigned further represents and certifies to the Court that the undersigned's representation of the Respondent was continued through the appellate process in the United States Court of Appeals for the Eighth Circuit by court-appointment, a copy of said Order being attached hereto, marked "Exhibit B" and by this reference made a part hereof as though fully set forth herein.

LYNN, JACKSON, SHULTZ & LEBRON, P.C.
P.O. BOX 8250
RAPID CITY, SD 57709
605-343-5263

Finally, the undersigned also represents and certifies to the Court that the Respondent was incarcerated for approximately nine months after his trial (until October 4, 1982) during which time he obviously remained indigent. Since his release, the Respondent has diligently searched for, but has been unable to find employment and, therefore, remains indigent. Consequently, the financial condition of the Respondent on the undersigned's information and belief, has not substantially improved and he is entitled to proceed herein in forma pauperis to obtain the relief he is entitled to and to respond to the Petition for Writ of Certiorari filed by the United States of America without printing the same.

Respectfully submitted this 30th day of December, 1982.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY: _____
Gary D. Jensen
Attorneys for Respondent
P. O. Box 8110
Rapid City, SD 57701

AFFIDAVIT OF SERVICE

State of South Dakota:
ss
County of Pennington :

I, Gary D. Jensen, a member of the Bar of the State of South Dakota and of the United States District Court for the District of South Dakota and of the United States Court of Appeals for the Eighth Circuit, and counsel of record for Robert Eagle Elk, Jr., a/k/a Bobby Bear, Respondent above named, hereby certify that on the 30th day of December, 1982, pursuant to Rule 28, Rules of the Supreme Court of the United States, I served one copy of the foregoing Motion for Leave to Proceed in Forma Pauperis on Rex E. Lee, by depositing such copy in the United States Post Office, Rapid City, South Dakota, with first class postage prepaid, properly addressed to the post office of Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20503, the above-named Petitioner's counsel of record.

Therefore, all parties required to be served have been served in accordance with Rule 28.3, Rules of the Supreme Court of the United States.

Dated this 30th day of December, 1982.

Gary D. Jensen

Subscribed and sworn to before me this 30th day of December, 1982.

Notary Public, South Dakota

(SEAL)

My Commission Expires:

CJA 20 Appointment & Voucher for Counseling Services

APPOINTMENT

IN UNITED STATES ☒ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: U.S.A. vs. Robert Eagle Elk

FOR: Western Div., District of SD

AT: Rapid City, SD

LOCATION NUMBER: 41105

PROCEEDING (describe briefly)

CHARGE/OFFENSE (describe if applicable & check box *) ☒ Felony ☐ Misdemeanor
voluntary manslaughter

U.S. or other code citation

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

DOCKET NUMBERS
Magistrate: 81-082 M
District Court: 81-50050-01
Court of Appeals:

VOUCHER NUMBER: 498278

PERSON REPRESENTED (Show full name & status, & check box *)

Name already appears as ☐ PI or as ☐ DF above

COURT ORDER

☐ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☒ SUBSTITUTING COUNSEL FOR (name of prior counsel) Jon Mattson (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization printed here and below

Gary D. Jensen

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or Magistrate: [signature] Date: 7-27-81

OR BY ORDER OF THE COURT

(Clerk or Deputy)

TIME & EXPENSES VOUCHERED BELOW

I. IN OPEN COURT			
A. Commitment & Or Plea			
B. Motions & Hearings			
C. Bail Hearings		.25	
D. Sentence Hearings		21.50	30.00
E. Trial			
F. Revocation Hearings			
Other Hearings	Suppression hearing	2.50	
TOTAL IN COURT HOURS		24.25	727.50
II. OUT OF COURT			
A. Interviews & Conferences		49.4	
B. Obtaining & Reviewing Records		4.0	
C. Legal Research & Brief Writing		6.7	20.00
D. Travel Time	Preparation & receipt of corres. & pleadings; review & consideration of file; trial preparation	59.9	
E. Investigative & Other Work		4.0	
(See attached Statement)		124.0	2,480.00
TOTAL OUT OF COURT HOURS			3,207.50
TOTAL AMOUNT CLAIMED			

(See attached statement)

TOTAL TRAVEL EXPENSES	521.38
TOTAL OTHER EXPENSES	3,729.88
LESS AMOUNT PAID	-0-
NET AMOUNT CLAIMED	3,728.88

DATE: 2-18-82 AMOUNT APPROVED:

COUNSEL { IS A PRIVATE ATTORNEY / IS FURNISHED BY: COMMUNITY DEFENDER ORGANIZATION / BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. (605) 342-2592

VOUCHER NUMBER: 498278

SOCIAL SECURITY NO. 503-58-8754

X [signature]

ATTORNEY / ORGANIZATION / ADDRESS:
Gary D. Jensen
Attorney at Law
P.O. box 8110
Rapid City, SD

ZIP CODE 57701

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

EXHIBIT "A"

Copy 3-Retained by Attorney

Approved by U.S. Treasury - April 1971

APPOINTMENT

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☒ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: United States vs. Robert Eagle Elk, Jr., etc.

FOR: Eighth Circuit

AT: St. Louis, Missouri

LOCATION NUMBER: 25001

PROCEEDING (describe briefly): Appeal.

CHARGE/OFFENSE (describe if applicable & check box →): ☒ Felony ☐ Misdemeanor

Voluntary Manslaughter.

U.S. or other code citation ▶ 18 USC § 1153 & 1112

1 ☐ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☒ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

DOCKET NUMBERS
Magistrate:
District Court: S.D. CR-81-50050-0
Court of Appeals: 81-2425

VOUCHER NUMBER: 683644

PERSON REPRESENTED (Show full name & status, & check box →)

Robert Eagle Elk, Jr.

Name already appears as ☐ Pl. or as ☐ Df. above

COURT ORDER

☐ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☒ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR
(Name of prior counsel) (Date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization printed here and below

Gary D. Jensen

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or Magistrate

Date 12/24/81

OR BY ORDER OF THE COURT (Clerk or Deputy)

CLAIMED VOUCHERED BELOW

	TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT				
A ARRAIGNMENT &/OR PLEA			RATE PER HR. $	HOURS TIMES RATE
B MOTIONS & REQUESTS				
C BAIL HEARINGS				
D SENTENCE HEARINGS				
E TRIAL				
F REVOCATION HEARINGS				
G APPEALS COURT				
H OTHER (Specify below)				
TOTAL "IN COURT" HOURS			▶	$
II OUT OF COURT				
A INTERVIEWS & CONFERENCES			$	
B OBTAINING & REVIEWING RECORDS				
C LEGAL RESEARCH & BRIEF WRITING				
D INVESTIGATIVE & OTHER WORK (Specify)				
E TRAVEL TIME (Driving normal office hours only) TO FROM COURT (Not allowable if no court appearance for which TRAVEL TIME Claimed)				
TOTAL "OUT OF COURT" HOURS			▶	$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			▶	$
III ITEMIZED EXPENSES (Specify on supplemental sheet)			AMT. PER ITEM $	
TOTAL ITEMIZED EXPENSES			▶	$
TOTAL COMPENSATION & EXPENSES			▶	$
If more than one attorney has been appointed, indicate if this is for:			DEDUCT ADVANCE PAYMENTS PREVIOUSLY PAID IF APPLICABLE	
			NET AMOUNT CLAIMED ▶	$

CERTIFICATIONS OF ATTORNEY/PAYEE

Have compensation and/or reimbursement for work in this case ☐ Yes ☐ No
Have you received any other payment (compensation or anything of value) from any source in connection with your representation? If "Yes," how much have you received? $
Do you anticipate receiving additional payment?
If this is an appointment where you represent more than one person in this court, are you representing other persons in this case? ☐ Yes ☐ No

SIGNATURE OF ATTORNEY/PAYEE: I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS ▶ DATE

AMOUNT CERTIFIED/APPROVED

APPROVED FOR PAYMENT

SIGNATURE OF JUDGE/MAGISTRATE ▶ DATE

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS ▶ Payment in excess of statutory limitation approved under 18 USC 3006A(d)(3) DATE

$ AMT. APPROVED $

COUNSEL { X IS A PRIVATE ATTORNEY / IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION ☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. (605) 342-2592

SOCIAL SECURITY NO. 503-58-9754

VOUCHER NUMBER ▶ 683644

HAS DEFENDANT PAID ANY MONEY TO YOU SINCE HIS ARREST, OR TO YOUR KNOWLEDGE, TO ANYONE ELSE, IN CONNECTION WITH THE OFFENSE FOR WHICH YOU WERE APPOINTED TO DEFEND HIM? IF SO, GIVE DETAILS.

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

ATTORNEY / ORGANIZATION / ADDRESS

Mr. Gary D. Jensen
Attorney at Law
Post Office Box 8110
Rapid City, South Dakota

ZIP CODE 57701

EXHIBIT B

Answer.